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Report of the Working Group on the Universal Periodic Review*

Fiji

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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1. The Republic of Fiji ('**Fiji**') takes due note of the recommendations made in its second review during the 20th session of the Working Group in the Universal Periodic Review ('**UPR**'), held on 29 October 2014.

2. In accordance with paragraphs 27 and 32 of the annex to the Human Rights Council resolution 5/1 and paragraph 16 of the annex to resolution 65/281, Fiji provides information in this addendum regarding its position on the recommendations made to it, specifically those in the section on 'recommendations will be examined' in paragraph 101 of the Report of the Working Group on the UPR (see document A/HRC/28/8, paragraphs 101.1 to 101.40).

3. On 31 October 2014, Fiji announced to the Working Group during the adoption of the Draft Report, the endorsement of 98 of the 138 recommendations made. Fiji also stated that 12 of the 98 endorsed recommendations were already implemented or in the process of implementation.

4. Lastly, Fiji stated that a reply would be provided at a later stage with regards to 40 of the recommendations that were left pending, as it was necessary to either consult with the relevant independent institutions, or refer them to the relevant government agencies for their input and advice.

5. This addendum provides Fiji's position/responses to the 40 recommendations that were left pending. For the purposes of clarity, the recommendations are listed in the order in which they appear in the Report (A/HRC/28/8, paragraphs 101.1 to 101.40).

Recommendation	*Fiji's Position Responses*		*Comments*
101.1[1]	–	Noted	Fiji is committed to ratifying/acceding to all international human rights instruments within 10 years and states that the ratification of optional protocols will be the prerogative of the Fijian Parliament. Nonetheless, the Constitution's robust Bill of Rights goes beyond the obligations under these instruments and places an obligation on the State in securing and advancing those rights. In terms of initiating a process to ensure compatibility with existing laws, the Fijian Government through its legislative drafting section will continue to ensure that all existing laws are in conformity with the Constitution, and any required amendments to existing laws will pass through the normal parliamentary process. Nonetheless, the Constitution prescribes that all written laws in force prior to the Constitution, continue in force as if they had been made under or pursuant to the Constitution, and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

			In terms of judicial strengthening, the Chief Justice had affirmed at Fiji's second review during the 20th session of the Working Group in the UPR on 29 October 2014, that training is compulsory for judicial officers and that the judiciary continues to provide training with regards to *inter alia*, family law, employment relations and human rights issues. Furthermore, the Chief Justice had also stated that the judiciary is open to training, input and assistance from specialist Non-Government Organisations. Moreover, the Constitution ensures the judiciary is in compliance with the United Nations Basic Principles on the independence of judges and lawyers.
101.2[2]	Accepted	–	Fiji re-iterates its comments with regards to recommendation 101.1 above and affirms its commitment to the timeframe of 10 years. Fiji is also committed to protecting and promoting human rights and is in the process of appointing Commissioners for its Human Rights and Anti-Discrimination Commission ('**Commission**'). The Fijian Government has consulted and invited the NGO coalition on Human Rights to submit their recommendations for the appointment of Commissioners. The Commission is responsible for the promotion, protection and observance of and respect for human rights in public and private institutions, and is also responsible for developing a culture of human rights in Fiji. It is further responsible for the monitoring, investigation and reporting on the observance of human rights in all spheres of life. The Commission is constitutionally empowered to *inter alia* enforce and monitor the compliance of human rights instruments ratified by the Government including by bringing proceedings before the judiciary, which are integral to the development of a robust human rights culture. It is important to note that the Constitution provides for the independence of the Commission in the performance of its functions and in the exercise of its authority and powers, including administrative autonomy and control over its own budget and finances. Furthermore, Fiji welcomes the OHCHR and development partners to work with the Fijian Government to assist in the capacity building of the Commission.
101.3[3]	–	Noted	Fiji repeats its comments above with regards to recommendation 101.1 and states that Fiji is committed to the timeframe of 10 years.
101.4[4]	–	Noted	Fiji reiterates its comments with regards to recommendation 101.1 and affirms Fiji's commitment to a 10 year timeframe and further state that the ratification of optional protocols will be the prerogative of the Fijian Parliament.

101.5[5]	–	Noted	Fiji repeats its comments above with regards to recommendations 101.4 above.
101.6[6]	–	Noted	Fiji repeats its comments above with regards to recommendation 101.4. At Fiji's second review during the 20th session of the Working Group in the UPR on 29 October 2014, Fiji made an undertaking to remove all references to the death penalty. The only reference to the use of the death penalty remained in Fiji's Military Code by virtue of the applicability of the UK Army Act 1955, but had never been used since Fiji's independence. Fiji is pleased to announce that at its first Parliamentary sitting for 2015, the Fijian Parliament passed an amendment to the Military Code, which removed all references of the death penalty. Fiji is further pleased to announce that Fiji's accession to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('**UNCAT**') was also tabled at the first sitting of the Fijian Parliament for 2015 for approval, and is currently under consideration by the relevant Parliamentary sub-committee. Moreover, the Fijian Prime Minister in his address at the High Level Session of the 28th Session of the UNHRC announced Fiji's commitment to accede to UNCAT. Given the above, Fiji's immediate focus and priority is to ensure that all necessary processes for the accession and implementation of UNCAT is completed. The ratification of the Optional Protocol will be considered in the future pursuant to the prerogative of the Fijian Parliament.
101.7[7]	–	Noted	Fiji repeats its comment above with regards to recommendation 101.6 in relation to the Fiji's position on OP-CAT.
101.8[8]	–	Noted	Fiji repeats its comments above with regards to recommendation 101.4.
101.9[9]	–	Noted	Fiji repeats its comments with regards to recommendation 101.4.
101.10[10]	–	Noted	The Constitution that came into force on 7 September 2013 is an expression of the will of the Fijian people. Any amendment of the Constitution would only be considered through the process stipulated under the Constitution, whereby Parliamentary approval must be sought for a referendum to take place.
101.11[11]	–	Noted	Fiji repeats its comment above with regards to recommendation 101.10.

101.12[12]	Accepted	–	Fiji repeats its comment above with regards to recommendation 101.2 and reiterates that the Constitution establishes the Human Rights and Anti-Discrimination Commission (**'Commission'**), which is the mechanism that ensures monitoring and compliance of ratified human rights instruments. The Commission will conduct the necessary consultations to ensure monitoring and compliance of human rights instruments.
101.13[13]	Accepted	–	Fiji has ratified the Rome Statute of the ICC and has aligned its domestic legislation with the provisions of the Rome Statute through the Crimes Decree 2009. There is full complementarity between the Rome Statute and the Crimes Decree, and Fiji commits to keeping current with amendments to the Rome Statute. The ratification of the Agreement of Privileges and Immunities of the Court will be the prerogative of the Fijian Parliament.
101.14[14]	Accepted	–	The Human Rights and Anti-Discrimination Commission is responsible for the promotion, protection and observance of and respect for human rights, including violence against women. It is independent of the Government and adopts its own policies and priorities.
101.15[15]	Accepted	–	Fiji is committed to inviting special mandate holders and will endeavour to invite one special mandate holder per year for key areas which are identified as a priority of the Fijian Government, such as areas concerning socio-economic rights, e.g. sanitation and water. Fiji is currently consulting with various stakeholders in terms of the priority areas where an invitation can be extended to special mandate holders, and invitations will be extended or visits will be accepted when Fiji is in a position to properly and adequately resource and host such special mandate holders, so as to obtain maximum benefit from the visit. In light of the above, Fiji is pleased to announce that the Fijian Prime Minister in his address to the High Level Session of the 28th Session of the UNHRC, has already invited the Special Rapporteur on Water and on Education and Fiji is looking forward to the assistance and benefit that this would bring.
101.16[16]	–	Noted	Fiji reiterates its comments above with regards to recommendation 101.15 in terms of the standing invitation for special procedures mandate holders, however Fiji notes an open invitation of the same.
101.17[17]	Accepted	–	Fiji re-iterates its comments above with regards to recommendation 101.15.
101.18[18]	Accepted	–	Fiji re-iterates its comments above with regards to recommendation 101.15.

101.19[19]	Accepted	–	Fiji re-iterates its comments above with regards to recommendation 101.15.
101.20[20]	Accepted	–	Fiji recognises the importance of responding to requests for visits and will endeavour to respond to such requests with expediency. However the visits should be timed in accordance with Fiji's comments above with regards to recommendation 101.15.
101.21[21]	Accepted	–	Fiji re-iterates its comments above with regards to recommendation 101.15.
101.22[22]	Accepted	–	Fiji re-iterates its comments above with regards to recommendation 101.20.
101.23[23]	Accepted	–	Fiji re-iterates its comments above with regards to recommendation 101.15.
101.24[24]	–	Noted	Fiji re-iterates its comments above with regards to recommendation 101.1 whereby the Chief Justice had stated at Fiji's second review during the 20th session of the Working Group in the UPR on 29 October 2014, that the judiciary is open to training input and assistance from specialist Non-Government Organisations, and that the Constitution ensures the judiciary is in compliance with the United Nations Basic Principles on the independence of judges and lawyers. Fiji further states that any such requests for visit of the Special Rapporteur on the Independence of Judges and Lawyers to provide expertise and assistance in the process of maintaining an independent judiciary will be the prerogative of the Fijian Judiciary.
101.25[25]	–	Noted	Fiji re-iterates its comments above with regards to recommendation 101.24.
101.26[26]	–	Noted	Fiji re-iterates its comments above with regards to recommendation 101.24.
101.27[27]	–	Noted	Fiji re-iterates its comments above with regards to recommendation 101.15 and further states that Fiji's immediate focus and priority is to ensure that all necessary processes for the accession and implementation of UNCAT is completed.
101.28[28]	–	Noted	Fiji re-iterates its comments above with regards to recommendation 101.27.
101.29[29]	–	Noted	Fiji is committed to the protection, preservation and promotion of human rights for all Fijians. Invitations to the Special Rapporteur on Human Rights Defenders will be extended on the prerogative of the Fijian Government.

			Fiji is currently consulting with various stakeholders in terms of the priority areas where an invitation can be extended to Special Rapporteurs, and invitations will be extended or visits will be accepted when Fiji is in a position to properly and adequately resource and host such special mandate holders, so as to obtain maximum benefit from the visit.
101.30[30]	Accepted	–	Fiji is committed to strengthening existing mechanisms that is targeted towards safeguarding the rights of all Fijians. Moreover, the Constitution unequivocally provides for the protection, promotion and preservation of human rights. The Bill of Rights provisions has the unprecedented inclusion of social and economic rights in addition to civil and political rights which safeguards not just minorities, but all Fijians. However our acceptance of this recommendation presupposes our similar concerns for all Fijians including other disadvantaged groups such as the disabled.
101.31[31]	–	Noted	Fiji does not accept the premise of the recommendation that there is any executive interference to cease. The doctrine of separation of powers is enshrined in the Constitution. The courts and all judicial officers are independent of the legislative and executive branches of Government and are subject only to the Constitution and the law, which they must apply without fear, favour or prejudice. The Constitution further prohibits any interference with the judicial or the administrative functioning of the Judiciary. The Judicial Services Commission established by the Constitution is the independent body responsible for the discipline and appointment of judicial officers and the Legal Practitioners Unit is an independent institution that is responsible for the discipline and qualification of legal practitioners in Fiji. Therefore, Fiji has robust legislative and constitutional framework that guarantees judicial independence and the discipline of judicial officers and legal practitioners in Fiji, under these institutions.
101.32[32]	–	Noted	Fiji has prepared a MOU on the future of labour relations in Fiji that more accurately reflects the intention of the tripartite partners. The MOU has been made available to the Workers Group and the Employers Group with the intention that all the tripartite partners will execute the MOU in good faith.

101.33[33]	–	Noted	No country guarantees unfettered freedom of expression or assembly. Whilst guaranteeing freedom of speech, expression, thought, opinion and publication, the Constitution explicitly prohibits any speech, opinion, or expression that is tantamount to *inter alia* propaganda of war, incitement of violence or insurrection against the Constitution, or advocates hatred based on any of the prohibited grounds of discrimination, such as race, culture, sexual orientation and gender identity. These freedoms are subject to limitations through law, such as in the interests of national security and public safety. The limitations to these freedoms are within the framework of international law and in consonance with General Recommendation No. 35 (CERD/C/GC/35) of the International Convention on the Elimination of all forms of Racial Discrimination on Combating Racist Hate Speech.
101.34[34]	–	Noted	Fiji re-iterates its comments above with regards to recommendation 101.33.
101.35[35]	–	Noted	Fiji does not accept the premise that aspects of the decrees mentioned unduly restrict fundamental freedoms. It would be for the Fijian judiciary to assess this against the Constitution if a case is brought it, and only based on that determination would Fiji act if necessary.
101.36[36]	–	Noted	Fiji is of the view that the word "favourably" prejudges the outcome of what is supposed to be an independent and objective review process. Fiji's comments to recommendation 101.35 are pertinent to note.
101.37[37]	–	Noted	Fiji reiterates its comments above with regards to recommendation 101.33 and further states that its comments on recommendation 101.35 are pertinent to note. With regards to the review of the Essential National Industries Decree the 2011 ("**Decree**"), the Fijian Government has met with relevant stakeholders to form a Committee to review the Decree and any proposed consideration to be submitted to Cabinet.
101.38[38]	–	Noted	Fiji does not accept the premise that the Media Industry Development Decree results in a climate of fear and self-censorship, harassment and intimidation and reiterates its comments above with regards to recommendations 101.33 and 101.35.
101.39[39]	–	Noted	Fiji reiterates its comments above with regards to recommendations 101.33 and 101.35 and further states that the Fijian Government is in the process of finalising its Freedom of Information legislation, which Fiji endeavours to have tabled in Parliament by the end of the second quarter of this year.

101.40[40]	Accepted	–	All existing laws in Fiji will be and are being measured against the Constitution. This is done either by Parliamentary scrutiny or by judicial processes under section 44 of the Constitution.

6. Fiji is pleased to announce that 14 of the 40 recommendations are taken as accepted and 26 of the same taken as noted. Therefore, Fiji has accepted 112 of the total of 138 recommendations.

Notes

[1] Bolster the constitutional Bill of Rights by acceding to ICCPR and the First Optional Protocol thereto and, in that context, initiate a process in order to ensure compatibility of existing national laws and decrees with the new Constitution. Part of this process should be strengthening the judiciary (Germany).

[2] Demonstrate its commitment toward protecting and promoting human rights and fundamental freedoms by acceding to, without delay, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (Canada).

[3] Complete the work towards the ratification of the core international human rights treaties, firstly ICCPR and ICESCR within the period of the next review (Russian Federation).

[4] Ratify the first optional protocol to ICCPR (Uruguay); Ratify the first optional protocol to ICCPR (Estonia); Move on speedily to the ratification and/or application of human rights instruments and optional protocols, particularly the First Optional Protocol to the International Covenant on Civil and Political Rights (Chile); Accede to the international treaties on human rights and ratify the first optional protocol to ICCPR (Portugal).

[5] Accede to the international treaties on human rights and ratify the Optional Protocol to ICESCR (Portugal).

[6] Move on speedily to the ratification and/or application of human rights instruments and optional protocols, particularly the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Chile).

[7] Consider ratifying OP-CAT, as well (Denmark).

[8] Ratify the Optional Protocol to CEDAW (Portugal).

[9] Accede to the international treaties on human rights and ratify the OP-CRC-IC (Portugal).

[10] Establish a Constitutional Commission to conduct a comprehensive review of the 2013 Constitution and carry out national consultations to ensure that the Constitution is reflective of the will of the people (Estonia).

[11] Consider establishing a Constitutional Commission to conduct a comprehensive review of the Constitution, thereby ensuring that it is reflective of the will and aspirations of the citizens of Fiji, seeing that this might help to bring about a more stable political structure (Namibia).

[12] Establish, in consultation with civil society, a mechanism to develop and harmonize a legislative framework derived from the new Constitution and in accordance with international human rights standards (Mexico).

[13] Fully align its national legislation with the Rome Statute of the ICC and ratify the Agreement on Privileges and Immunities of the Court (Estonia).

[14] Consider ensuring that the issue of violence against women be considered by the Human Rights and Anti-Discrimination Commission as one of its priorities (Slovenia).

[15] Extend a standing invitation to Special Procedures to allow them easy access in visiting Fiji and thus assist the authorities in pursuing progress (Belgium).

[16] Extend an open and standing invitation to the United Nations Special Procedures mandate holders (Chile).

[17] Extend a standing invitation to the Special Procedures of the Human Rights Council and coordinate in the shortest possible terms the requested visits (Costa Rica).

[18] Issue standing invitations to all special procedures (Ghana).

[19] Extend a Standing Invitation to the Special Procedures of the Human Rights Council (Portugal).

[20] Respond to the numerous requests for visits issued by the special procedures and extend a standing invitation to the special procedures as soon as possible (Slovenia).

[21] Extend a standing invitation to all UN Human Rights Council special procedures and receive those that have requested to visit (Montenegro).

[22] Issue a standing invitation to all Human Rights Council Thematic Special Procedures, and facilitate requested visits and respond promptly and substantially to the communications transmitted to Fiji by the Special Procedures mandate holders (Norway).

[23] Accept visits from and provide full cooperation to the Special Procedures of the Human Rights Council, in order for them to fulfil their mandates and pursuant to commitments of the Government (Uruguay).

[24] Accept outstanding requests from special mandate holders, including that of the Special Rapporteur

on the Independence of Judges and Lawyers, to visit Fiji. (New Zealand).

[25] Welcome the visit of the Special Rapporteur on the Independence of Judges and Lawyers, in order to provide expertise and assistance in the process of maintaining an independent judiciary (Israel).

[26] Facilitate a visit of the Special Rapporteur on the independence of judges and lawyers prior to the 3rd review of Fiji under the UPR (Solomon Islands).

[27] Extend a standing invitation to UN Special Procedures mandate holders and initiate without delay cooperation with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Switzerland).

[28] Respond favourably to the request of the Special Rapporteur on Torture to visit the country (Denmark).

[29] Facilitate a visit by the Special Rapporteur on Human Rights Defenders (Norway).

[30] Strengthen existing mechanisms in the current social, political and economic structures of the Fijian society to safeguard the rights of ethnic minorities (Solomon Islands).

[31] Amend the legislative and constitutional framework to maintain the separation of powers and cease any executive interference with the independence of the judiciary and lawyers, and ensure that the processes governing the qualification and discipline of lawyers and judges are free from political interference (Canada).

[32] Conclude the Tripartite Memorandum of Understanding on the future of labour relations in Fiji (Australia).

[33] Take the necessary measures to amend existing legislation in order to bring possible restrictions to freedom of expression or assembly in line with international human rights norms and standards (Belgium).

[34] Amend the Constitution as well as national legislation to ensure that the rights to freedoms of expression, assembly and association be guaranteed without restrictions other than those provided for within the framework of international law (Switzerland).

[35] Ensure respect for freedoms of expression, peaceful assembly, and association by amending aspects of decrees such as the Public Order Act Amendment Decree, the Political Parties Decree, and the Media Industry Development Decree, that unduly restrict fundamental freedoms (United States of America).

[36] Favourably consider revising a Public Order Amendment Decree and the Media Industry Development Decree in a way that fully ensures the rights to freedoms of association, assembly, press and expression (Republic of Korea).

[37] Review and amend or repeal as necessary all decrees limiting freedom of expression and association, particularly the Media, Essential National Industries and Public Order Decrees (United Kingdom of Great Britain and Northern Ireland).

[38] Bring legislation on freedom of expression, assembly and association in line with international human rights standards, in particular by repealing "The Media Industry Development Decree" 2010 in order to end intimidation and harassment of those that express criticism of the State, to change the climate of fear and self-censorship and to ensure that no one is arbitrarily arrested and detained for exercising their rights (Germany).

[39] Ensure respect for freedom of expression and protection of journalists by reforming the Media Industry Development Decree 2010 and introducing freedom of information legislation that accords with international human rights standards (Canada).

[40] Create and maintain a safe and enabling environment for civil society actors to freely associate, by amending relevant laws and ensuring they are not invoked to curtail the right to freedom of peaceful assembly (Ireland).